

No. 13-1314 PO

The Director filed a motion for summary decision on January 24, 2014. We notified Cross that he should file any response by February 10, 2014, but he filed nothing. However, pursuant to 1 CSR 15-3.446(6)(C), we denied the motion on February 14, 2014, because it was filed before the time for filing a responsive pleading had expired.

On February 19, 2014, the Director filed the motion again. We notified Cross that he should file any response by March 6, 2014, but again he filed nothing.

We may grant a motion for summary decision if a party establishes facts that entitle any party to a favorable decision and no party genuinely disputes such facts. 1 CSR 15-3.446(6)(A).¹ Parties may establish a fact, or raise a dispute as to such facts, by admissible evidence. 1 CSR 15-3.446(6)(B). The Director relies on the documents submitted with the motion: his affidavit of Cross's licensure and certified copies of court records. The records are admissible pursuant to § 490.130 and § 536.070(6).² And, by failing to respond to the motion, Cross has failed to raise a genuine issue as to the facts the Director established therein. 1 CSR 15-3.446(6)(B).

Accordingly, the following findings of fact are undisputed.

Findings of Fact

1. Cross holds a peace officer license issued by the Director that has been current and active since May 14, 2003.
2. On November 14, 2011, in the circuit court of Jefferson County, Missouri, Cross pled guilty to assault in the third degree, a Class A misdemeanor, in violation of § 565.070, RSMo. 2000.
3. Cross received a suspended imposition of sentence and two years' probation.

Conclusions of Law

We have jurisdiction over this case. § 590.080.2. The Director has the burden of proving that Cross has committed an act for which the law allows discipline. *See Missouri Real Estate Comm'n v. Berger*, 764 S.W.2d 706, 711 (Mo. App., E.D. 1989).

¹ All references to "CSR" are to the Missouri Code of State Regulations, as current with amendments included in the Missouri Register through the most recent update.

² Statutory citations are to the RSMo Supp. 2013, unless otherwise indicated.

The Director alleges that there is cause for discipline under § 590.080:

1. The director shall have cause to discipline any peace officer licensee who:

* * *

(2) Has committed any criminal offense, whether or not a criminal charge has been filed[.]

The certified court records establish that Cross pled guilty to assault in the third degree, a Class A misdemeanor under § 565.070. Although a guilty plea resulting in a suspended imposition of sentence does not collaterally estop Cross from presenting evidence to the contrary, it is competent and substantial evidence that he did commit the criminal offense. *Director of Public Safety v. Bishop*, 297 S.W.3d 96, 99 (Mo. App. W.D. 2009). As Cross presented no evidence to disprove the fact, we conclude that he committed the crime of assault in the third degree. He is subject to discipline under § 590.080.1(2).

Summary

There is cause to discipline Cross' license under § 590.080.1(2).

SO ORDERED on March 11, 2014.

\s\ Karen A. Winn

KAREN A. WINN

Commissioner